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58 Cal. 400. While this assumption is supported by *Bond v. Worley*, 26 Mo. 254; *Ex parte Boyd*, 105 U. S. 657; and *Rindskopf v. Platto* (C. C.) 29 Fed. 312, the great weight of authority is to the contrary, *Wood v. Hudson*, 96 Ala. 469; *Grimes v. Hilliary*, 38 Ill. App. 246; *Union Passenger R. R. Co. v. Mayor*, 71 Md. 238; *Elliston v. Hughes*, 1 Head. (Tenn.) 227.

EVIDENCE—EXPERT TESTIMONY—REMAINDERS.—RICARDS v. SAFE DEPOSIT AND TRUST CO., 55 ATL. 384 (MD.).—*Held*, incompetent to prove by medical testimony that a married woman 53 years of age was incapable of child-bearing for the purpose of defeating an estate in remainder.

There are some early English cases which upheld a presumption that a woman of advanced age was incapable of bearing a child. The more modern English cases have not adopted this presumption. *In re Dawson*, L. R. 39 Ch. Div. 155; *In re Sayers Trusts.*, L. R. Exch. 319. No case can be found in the American courts in which such a presumption has been given effect. *Lawson on Presumptive Evidence*, p. 302. If a physician may testify that because of a physical degeneracy a woman is incapable of bearing children so that a trust created for her benefit, during her life only, may be brought to an end and the vesting of a remainder may be defeated, no one can foretell to what lengths such a precedent would lead. The court holding this to be a case of first impression acted cautiously and with due consideration of the demoralizing consequences that might follow its decision.

INHERITANCE TAX—VALIDITY—CONSTITUTIONAL LAW—PRIVILEGES AND IMMUNITIES—UNCONSTITUTIONALITY OF STATUTE.—IN RE JOHNSON'S ESTATE, 139 CAL. 532.—A statute imposing a tax on property passing by will "other than to the use of father, mother, husband, wife, lawful issue, brother or sister," was amended to include "nieces and nephews, when a resident of this State." *Held*, not void as in conflict with the constitutional provision declaring that citizens of each State shall be entitled to privileges and immunities of the several States. Beatty, C.J., *dissenting*.

Overruling *Estate of Mahoney*, 133 Cal. 180, which finds authority in *Sprague v. Thompson*, 118 U. S. 90, and which strikes out the amending clause as unconstitutional. Although the unconstitutionality of laws imposing a special tax discriminating against non-residents is clear; *Cullman v. Arndt*, 125 Ala. 581; and a court, if possible, construes, where an exemption is claimed, in favor of the tax and against the exemption; *R. R. Co. v. Grand Rapids*, 102 Mich. 374; nevertheless, by the great weight of authority, beginning with *Campbell v. Morris*, 3 Har. & M. (Md.) 554, the courts have held privileges granted by a State to its citizens to be extended to citizens of the several States. *Sprague v. Fletcher*, 64 Vt. 69; *The Slaughter House Case*, 16 Wall. 36.

INFANCY—WAGES OF SON—RIGHTS OF CREDITORS OF FATHER.—WISNER v. OSBORN, 55 ATL. 51 (N. J.).—*Held*, that the wages earned by an infant emancipated by his father, though living at home, are not subject to the claims of the father's creditors.

Absence of fraud must be shown. *Elfelt v. Hinch*, 5 Ore. 255. Living at home does not affect the infant's emancipation. *Wilson v. McMillan*, 62 Ga. 161; *Wood on Master and Servant*, p. 30. The authorities show much diversity of opinion on this point. Some courts hold that the wages may be

reached by the father's creditors. *Stumbaugh v. Anderson*, 46 Kan. 541; *Bell v. Hallenback*, 1 Wright (Ohio) 751. The principal case follows the weight of authority, *Atwood v. Holcomb*, 39 Conn. 270; *Stanley v. National Bank*, 115 N. Y. 122; *Wambold v. Vick*, 50 Wis. 456. The courts of New Jersey are unanimous in upholding this decision. *Costello v. Prospect Brewing Co.*, 152 N. J. Eq. 557; *Peterson v. Mulford*, 36 N. J. Eq. 481.

INSURANCE—APPLICATION—AUTHORITY OF AGENT TO WAIVE PAYMENT OF PREMIUM.—*RUSSELL v. PRUDENTIAL INS. CO.*, 68 N. E. 252 (N. Y.).—A general agent delivered policy to the insured, extending payment of premium contrary to the provisions of the contract. *Held*, that, in the absence of proof of agent's express authority to waive payment, beneficiary could not recover. Haight, J., *dissenting*.

The decision is based on the signature by the insured of an application, subsequently embodied in the policy, making payment of first premium a condition precedent to its validity. Where there is no previous subscription to the substantial terms of the contract, the weight of authority is that agents can waive provisions of policy relative to first payment. *Boehen v. Ins. Co.*, 35 N. Y. 131; *Dunn v. Ins. Co.*, 69 N. H. 224; *Richards on Insurance*, p. 93. Acceptance by agent of a note and a further extension after its maturity has been held to constitute a waiver of cash payment stipulations in application and policy. *Stewart v. Ins. Co.*, 155 N. Y. 257, an opinion which is based, however, upon the assumption that the company is estopped from denying a ratification after the lapse of a reasonable period of time. The dissenting opinion in the present case contends that the ruling of the majority will result in defrauding the insuring public. It is the prevailing custom of insurance agents to extend payment of premiums regardless of contract stipulations. It is also true that the insured generally attaches his signature to the application under such conditions as to make it impracticable for him to familiarize himself with all of its terms. In view of these considerations, the dissenting position seems well taken, and is in line with the decision in *Mathews v. Acc. Ass'n*, 78 Wis. 588; *Jones v. Ins. Co.*, 168 Mass. 245.

LIFE INSURANCE—POLICY—APPLICATION—WARRANTIES—AUTHORITY OF INSURANCE AGENT.—*DIMICK v. METROPOLITAN LIFE INS. CO.*, 55 ATL. 291 (N. J.).—Where an insurance company makes the answers in its application blanks warranties and certain agents of the insurer write answers different from those given by the applicant, which they know to be false, *held*, that such answers constitute a breach of warranty, nullifying the policy.

This is the first case decided where a policy was vitiated through the writing of false answers by both the insurance and medical solicitors. The case most nearly in point, *Sternaman v. Metropolitan Life Ins. Co.*, 170 N. Y. 13, holds the contrary, where the medical examiner answered falsely; but it is not controlling here, since no question was raised concerning the truth of the solicitor's answers. In the latter cases it has been held that false answers vitiate the policy; *Van Shoick v. Niagara Fire Ins. Co.*, 68 N. Y. 434; *O'Brien v. Home Benefit Society*, 117 N. Y. 310; but the prevailing authority in New York is otherwise. The decision rests upon the doctrine that the principal is not bound by acts of the agent in excess of authority.